



**Date:** August 22, 2008

**To:** City Manager for Council Action

**From:** Director of Planning and Inspection

**Subject:** Approval and Authorization for City Manager to Execute Services Agreement for Inspection Services of Morse Mansion (981 Fremont Street)

**EXECUTIVE SUMMARY:**

The City has received a number of complaints about the use and the maintenance activities at the Morse Mansion, located at 981 Fremont Street. The property was recently purchased with the intention of returning the property to single family use and completing some related property improvements. As a result of a thorough evaluation of the property's current zoning designation of OA-HT (Professional Office – Historic Combining) conducted by Planning and Inspection Department staff and the City Attorney's Office, the existing zoning designation restricts the allowed use of the subject site to professional offices. This designation does not allow residential uses of any kind, including a sorority house or other group living arrangement, nor does this designation allow any combination of uses that includes residential occupancy. Under the Municipal Code, as well as under the provisions of the 1981 re-zoning approval for the property, there is no language that provides a reversionary right to the previous residential zoning or use without certain actions. From the facts available to date, the conversion of the Morse Mansion to a residential use without benefit of zoning entitlements and some improvements made on the property appear to violate City codes, including zoning regulations related to use and parking. In a letter dated July 25, 2008, (attached – Exhibit 1) the property owner was apprised of the City's investigation of the issues. At that time, the City recognized that there were tenants living in the former residential structure and requested that there be no further expansion of the residential use, pending the City's resolution of the HT zoning ordinance question. The City acknowledged the new owners' intent to file a rezoning application to address the full scope of the proposal for reuse of the property; as of the preparation of this report there is no application yet on file.

There is also evidence that there has been some interior and exterior changes to the property without benefit of approvals or permits dating back to time before the current owners purchased the property. Because the Morse Mansion is listed on the National Register of Historic Places and subject to the City's HT historic combining district regulations, changes to the property that are beyond routine maintenance are subject to review and approval by the City. Depending on the extent of physical improvements, the review of changes could require only staff-level approvals or they might require full consideration by the City's Historical and Landmarks Commission, Architectural Committee, Planning Commission and/or City Council. For example, simple maintenance items typically are staff level review, but significant changes to the structure, such as installation of new lighting fixtures, should have review by the Historical and Landmarks Commission prior to construction.

In light of the evidence of Municipal Code violations as well as concerns for health and safety, staff has taken the following actions:

1. Sent the attached Notice of Violation to the property owner, dated August 22, 2008, to vacate the premises pending resolution of code enforcement and/or rezoning proceedings (Exhibit 2); and,
2. Requested that the owner provide a copy of any and all lease arrangements currently in effect for the property.

Staff is also recommending that the City Council direct the City Manager to engage independent consultants with knowledge of Building Code requirements and the Secretary of the Interior standards for historic structures to conduct on-site inspections in order to:

1. Investigate and substantiate Building and Zoning Code compliance, including non-compliance with the conditions of approval associated with the 1981 OA-HT re-zoning approval;
2. Determine the extent of unpermitted improvements and their consistency with the Secretary of the Interior standards as required for National Register properties;
3. Assess any existing health and safety, as well as structural, issues;
4. Define any necessary improvements to correct health and safety and/or structural deficiencies consistent with the Secretary of the Interior standards.

A letter sent to the property owner, dated July 25, 2008, and a notice of violation sent to the property owner on August 22, 2008, are attached.

#### **ADVANTAGES AND DISADVANTAGES OF ISSUE:**

Requiring compliance with zoning and permitting requirements will also ensure that the historic value of this National Register property is preserved and that the health and safety of Santa Clara residents is protected. There may be short-term impacts on persons currently residing on the site and loss of rent for the owners.

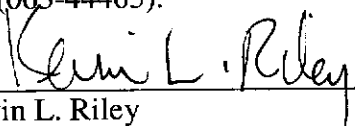
#### **ECONOMIC/FISCAL IMPACT:**

The total cost of the proposed consultant contracts will not exceed \$17,000. Funding is available to be transferred to the Planning Department Contractual Services account (001-5532-87870) from the General Contingency Fund Building Inspection Reserve (063-44465).

**RECOMMENDATION:**

That the Council:

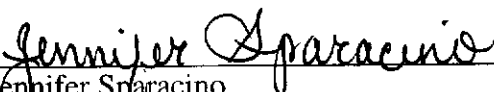
1. Approve and authorize the City Manager to execute a Services Agreement for inspection services of the Morse Mansion (981 Fremont Street) in an amount not to exceed \$17,000.
2. Approve \$17,000 additional appropriations in the Planning Division Contractual Services account (001-5532-87870) and a transfer of \$17,000 from the General Contingency Fund Building Inspection Reserve (063-44465).

  
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Kevin L. Riley  
Director of Planning and Inspection

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Certified as to Availability of Funds:  
063-44465 \$ 17,000.00

  
\_\_\_\_\_  
Mary Ann Parrot  
Director of Finance

APPROVED:

  
\_\_\_\_\_  
Jennifer Sparacino  
City Manager

FIVE COUNCIL VOTES

***Documents Related to this Report:***

- 1) *Letter to Property Owner, dated July 25, 2008*
- 2) *Notice of Violation to Property Owner, dated August 22, 2008*



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July 25, 2008

Mr. David LeBaron  
Mr. Clyde LeBaron  
Mr. Myron Von Raesfeld  
Mr. Mark De Mattei  
c/o De Mattei Construction, Inc.  
1794 The Alameda  
San Jose, CA 95126

Re: 981 Fremont Street, Morse Mansion

Dear Gentlemen,

I want to thank all of you for meeting with my staff and me on Monday, July 21, 2008 and again this afternoon to discuss how you can proceed with your plans for the Morse Mansion property. I realize that you heard a lot of concerns from all of us about how to process your proposal and the issues your neighbors have expressed to us. As we have discussed, this is a highly visible property and is very dear to many people as a significant landmark in the City, so I am certain you can appreciate the complexity of this effort and the scrutiny that will be applied to the review of all of our actions.

That said, I'll reiterate here that many of your neighbors have expressed concerns to us about residential use of the property as they perceive it today. They have enjoyed the quiet use of this neighborhood property as a professional office for several decades and I believe are alarmed that this scenario could change dramatically if the property use turns to housing of any kind for university students, particularly if it is not well managed from the outset and continuously.

We discussed in our meeting the difficulties in the language of the *HT-Historic Combining Districts* regulations (SCCC Chapter 18.58) with respect to change of uses on properties with this designation. While I believe that it is truly the intent of our ordinance to not only protect and enhance these residential structures when they are converted to commercial uses, but also to allow them to return to residential status some day if that is financially feasible, I have done a thorough review of the ordinance and do not find explicit language within these code sections to grant that reversion without a legislative action by the City Council. Further review of the ordinance is being done to ensure proper interpretation of the language.

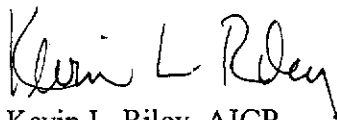
981 Fremont  
July 25, 2008  
Page 2

It has been clear from the beginning of our discussions that your intent is to return the property to a single family residential use and provide a work plan to address maintenance and upgrade to the Mansion, based upon a new approach to handling these significant costs. You indicate that you have completed the purchase and are preparing plans to submit to address zoning and use of the overall property. In the interest of keeping your neighbors apprised of your good intentions, I'd urge you to meet with them to relate what you have in mind, which will likely relieve some of the concerns that we have heard from them. Additionally, filing a planning application at your earliest convenience to substantiate your proposal will demonstrate your commitment.

While it is imperative that we resolve the issue of reversion from office to residential use within the context of your complete application, I understand that you already have residential tenants committed to this property at this time, and that the income from tenants helps to defray the costs of your purchase, maintenance and improvements. Even though it is in the City's best interest, as well, to ensure the proper maintenance of this very special property, I believe that activities related to increasing the occupancy or making physical improvements should be suspended until such time as we can have a full review of your proposal for the property. In the interim, it is acceptable for you to continue to house the tenants now on the property. We would ask, however, that you not intensify this occupancy until you receive approval by the City for your proposed use nor undertake improvements beyond those required to address health and safety concerns or for normal maintenance, and that we be advised as to those proposed improvements.

Again, I would urge you to file your application most expeditiously and as soon as possible meet with your neighbors to let them know of your intentions. I expect to see your project application within the coming weeks so that we have good information from you for the public to see. We are prepared, as we are for every applicant, to provide you a fair and reasonable review process in the most timely manner we can that meets all legal requirements. Please do not hesitate to call me at (408) 615-2450 if you have questions or comments.

Sincerely,



Kevin L. Riley, AICP  
Director of Planning and Inspection

KLR

cc: City Manager  
City Planner



Jennifer Sparacino  
City Manager

August 22, 2008

Mr. David LeBaron  
Mr. Clyde LeBaron  
Mr. Myron Von Raesfeld  
Mr. Mark De Mattei  
c/o De Mattei Construction, Inc.  
1794 The Alameda  
San Jose, CA 95126

Re: 981 Fremont Street, Notice of Violation

Dear Gentlemen:

As you know, the City has received a number of complaints regarding the residential use of your property at 981 Fremont Street. In the letter to you of July 25, 2008, I indicated that the language of the City's Historic Combining (HT) Ordinance (SCCC Chapter 18.58) does not seem supportive of reversion to residential use from the approved OA-HT designation without a legislative action by the City Council. In the research that has been done since that time, this information has been verified, such that you will need to submit an application to apply for a zoning designation for the property that would allow residential uses and you may need to obtain permits to complete building code improvements for residential use. It is my understanding that you intend to file such an application, but have not yet done so.

In light of possible zoning and building code violations or deficiencies, particularly insofar as this structure that has not been in use as a residential building since 1981, you are hereby directed to remove your residential tenant(s) until such time as proper zoning and building code compliance can be demonstrated. Upon your submission of the appropriate applications, our staff is committed to work with you to expedite the processing of your request.

Please do not hesitate to contact me or my office if you have questions or comments.

Sincerely,

Kevin L. Riley, AICP  
Director of Planning and Inspection

KLR/

cc: CM, Asst CM, City Attny, Bldg Off, City Plnr

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City Manager's Office  
1500 Warburton Avenue  
Santa Clara, CA 95050  
(408) 615-2210  
FAX (408) 241-0347  
www.ci.santa-clara.ca.us

Attachment 2

CITY OF SANTA CLARA  
AGENDA MATERIAL ROUTE SHEET

SUBJECT: Morse Mansion

Council Date: 8/26/08

**CERTIFICATION**

The proposed Agenda Report  
Regarding the Morse mansion  
has been reviewed and is hereby certified.

**PUBLICATION REQUIRED:**

The attached Notice/Resolution/Ordinance is to be published \_\_\_\_\_ time(s) at least \_\_\_\_\_ days before the scheduled meeting/public hearing/bid opening/etc., which is scheduled for \_\_\_\_\_, 200\_\_.

**AUTHORITY SOURCE FOR PUBLICATION REQUIREMENT:**

**Federal Codes:**

Title \_\_\_\_\_ U.S.C. § \_\_\_\_\_  
(Titles run 1 through 50)

**California Codes:**

Code \_\_\_\_\_ § \_\_\_\_\_  
(i.e., Government, Street and Highway, Public Resources)

**Federal Regulations:**

Title \_\_\_\_\_ C.F.R. § \_\_\_\_\_  
(Titles run 1 through 50)

**California Regulations:**

Title \_\_\_\_\_ California Code of Regulations § \_\_\_\_\_  
(Titles run 1 through 28)

City  
City Charter § \_\_\_\_\_ (i.e., 1310. Public Works Contracts. Notice published at least once at least ten days before bid opening)  
City Code § \_\_\_\_\_

1. As to City Functions, by

Kevin L. Riley  
Department Head

2. As to Legality, by

Heene Richter  
City Attorney's Office / CAO Assignment No 08.1253

3. As to Environmental  
Impact Requirements, by

Kevin L. Riley  
Director of Planning and Inspection

4. As to Substance, by

Carol McCarthy  
for City Manager

Revision Date June 7, 2005